

COMMONWEALTH OF VIRGINIA



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HENRICO SHERIFF OFFICE

WISE CIRCUIT COURT
Civil Division
P O BOX 1248 206 EAST MAIN ST.
WISE VA 24293
(276) 328-6111

Summons

To: ALERE TOXICOLOGY SERVICES INC
REGISTERED AGENT
ST CORP
4701 COX RD STE 285
GLEN ALLEN VA 23060

Case No. 195CL20001387-00

The party upon whom this summons and the attached complaint are served is hereby notified that unless within 21 days after such service, response is made by filing in the clerk's office of this court a pleading in writing, in proper legal form, the allegations and charges may be taken as admitted and the court may enter an order, judgment, or decree against such party either by default or after hearing evidence.

Appearance in person is not required by this summons.

Done in the name of the Commonwealth of Virginia on, Monday, August 24, 2020

Clerk of Court: J. JACK KENNEDY JR

by 
(CLERK/DEPUTY CLERK)

Instructions:

Hearing Official:

Attorney's name:

James Porchie v Alere Toxicology Services, Inc.
Complaint

VIRGINIA:

IN THE CIRCUIT COURT FOR WISE COUNTY

JAMES E. PORCHIE

PLAINTIFF

vs. Case No:

ALERE TOXICOLOGY SERVICES, INC.

DEFENDANT

COMPLAINT

Now comes the Plaintiff, by his Counsel, and files this Complaint against Alere Toxicology Services, Inc. seeking compensatory damages in the amount of Two Hundred Fifty Thousand Dollars [\$250,000.00] and punitive damages for Two Hundred Fifty Thousand Dollars [\$250,000.00].

In support of this claim, Counsel for the Plaintiff avers the following:

1. Venue is proper because the injury to the Plaintiff occurred in Wise County.
2. Alere Toxicology Services, Inc. is a foreign corporation that does business throughout Virginia, including Wise County.
3. At all times relevant to these proceedings, Alere was contracted by the Commonwealth of Virginia to provide drug testing services of state employees, including random drug testing of employees of the Virginia Department of Corrections.
4. Alere had a duty to use ordinary care to develop protocols for the proper gathering of samples for drug testing, and a duty to use the state of the art protocols for handling samples gathered from employees of the VDOC.
5. Alere knew that results of their drug testing that indicated a positive result for illegal substances would have substantial negative consequences for employees of the VDOC,

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including the loss of employment, mental anguish from the loss of employment and humiliation from being accused of illegal drug use.

6. At all times relevant to these proceedings, James Porchie was employed with the VDOC at the Wallens Ridge State Prison located in Wise County, and had been employed for many years.
7. On December 18, 2018, Porchie was randomly selected for a drug test that was to be conducted by Alere.
8. Prior to December 18, 2018, Alere failed to use ordinary care to develop proper protocols for the gathering of samples for drug testing, which contributed to the false reporting of cocaine use as described below.
9. On December 18, 2018, a sample was obtained from Porchie by an employee of the VDOC and the sample was subsequently submitted to Alere for testing.
10. On December 28, 2018, Alere falsely reported to the VDOC that Porchie was positive for cocaine use.
11. Porchie was terminated from his employment with the VDOC solely on the basis of the false report prepared by Alere, which included the loss of income and the loss of medical care via his health insurance through his employment.
12. Porchie disputed the results of the test conducted by Alere and requested an independent test.
13. As a result of Porchie's actions to dispute the results submitted by Alere, eventually, an independent laboratory tested the sample, and the testing conducted by the independent lab established that there was no cocaine in the sample obtained from Porchie.

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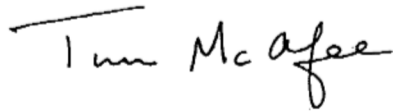
14. The Hearings Officer assigned to Porchie's grievance found that the Alere test was not reliable and reinstated Porchie with the VDOC. *See Exhibit #1 to this Complaint.*
15. Alere's testing of Porchie's sample was negligent, and as a proximate cause of this negligence, Porchie sustained legal damages that are compensable, including mental anguish, the temporary loss of income, attorneys fees and embarrassment.
16. The false allegation of illegal drug use by Alere became widely known among Porchie's peers and within the community and is defamatory.
17. As a result of the contract between Alere and the VDOC, Porchie was entitled to have proper testing done on any sample obtained from him, and Alere materially breached its contractual obligations, all to the detriment of Porchie.
18. Alere acted with reckless disregard to the rights of Porchie by failing to provide any guidance to the VDOC on how to obtain a proper sample that was not contaminated.
19. Alere acted with reckless disregard to the rights of Porchie by failing to use proper procedures in testing the sample.
20. The total amount of compensatory damages sustained by Porchie is Two Hundred Fifty Thousand Dollars [\$250,000.00].
21. Porchie seeks punitive damages for Two Hundred Fifty Thousand Dollars [\$250,000.00] as a result of the reckless disregard by Alere.

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WHEREFORE, Porchie requests that judgment be entered against Alere in the amount of Two Hundred Fifty Thousand Dollars [\$250,000.00] as compensatory damages and Two Hundred Fifty Thousand Dollars [\$250,000.00 as punitive damages, with prejudgment interest from December 28, 2018 and his taxable costs.

Respectfully submitted,

JAMES E. PORCHIE
BY COUNSEL



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Virginia State Bar Number: 21779
Attorney for: **James Porchie**
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Exhibit #1: Porchie Complaint



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution

DECISION OF HEARING OFFICER

In re:

Case No: 11316-R2

Second Reconsideration Order Issued: July 10, 2019

SECOND RECONSIDERATION DECISION

EDR Ruling 2019-4927 remanded this matter to the Hearing Officer for further consideration. The Hearing Officer ordered a test of the second oral sample. An independent laboratory confirmed the test of the second oral sample as "NEGATIVE RESULT."

The Hearing Officer finds that the first oral sample was a false positive for cocaine. Grievant's denial of cocaine use during the hearing was credible and confirmed by the second oral sample negative test result. Accordingly, the Original Hearing Decision rescinding the Group III Written Notice and reinstating Grievant with back pay and back benefits is affirmed. Grievant is also entitled to additional attorney's fees relating to the Agency's administrative appeal.

/s/ Carl Wilson Schmidt

Carl Wilson Schmidt, Esq.
Hearing Officer